

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

RASHEEDA CLARK and SHADANA CLARK	:	CIVIL ACTION
	:	
	:	NO. 06-CV-119
v.	:	
	:	
THE CITY OF PHILADELPHIA, <u>et al.</u>	:	

MEMORANDUM AND ORDER

Kauffman, J.

August 8, 2006

Plaintiffs Rasheeda Clark (“Rasheeda”) and Shadana Clark (“Shadana”) (together, “Plaintiffs”) bring this action for violations of 42 U.S.C. § 1983 (“Section 1983”) against Defendant the City of Philadelphia (“Defendant” or “the City”).¹ Now before the Court is the City’s Motion to Dismiss. For the reasons that follow, the Motion will be granted.

I. BACKGROUND

Accepting the well-pleaded allegations of the Complaint as true and drawing all inferences in Plaintiffs’ favor, the relevant facts are as follows. During the “middle to late 1980’s,” the City of Philadelphia Department of Human Services (“DHS”) assumed custody of Rasheeda and Shadana and placed them in foster care.² Complaint ¶ 20. Rasheeda and Shadana remained in foster care until the “the early to mid-1990’s” when they were returned to their natural mother, Latisha Clark (“Latisha”). At that time, Latisha was living with her boyfriend, Terry Lanier (“Lanier.”). Complaint ¶¶ 21, 22.

At some point thereafter, Latisha “left [Rasheeda and Shadana] with [Lanier] and never

¹ Initially, Plaintiffs had also named the City of Philadelphia Department of Human Services (“DHS”) as a Defendant. However, Plaintiffs have agreed to the voluntary dismissal of DHS. Accordingly, in the analysis that follows, the Court will refer to the City of Philadelphia as the lone defendant.

² The City is legally responsible for DHS’s conduct. See 53 P.S. § 16257 (providing that “no [municipal] department shall be taken to have ... a separate corporate existence, and hereafter all suits growing out of their transactions ... shall be in the name of the City of Philadelphia.”).

returned.” Complaint ¶ 22. Plaintiffs remained with Lanier “for a number of years” despite the fact that he was not a family member and lacked legal custody. Complaint ¶ 23, 24. The Complaint alleges that during the period when the girls were living with Lanier, he “repeatedly raped” them and engaged in a number of other sexual offenses. Complaint ¶ 25. In 2001, Rasheeda became pregnant by Lanier and on April 2, 2002 gave birth to a son. Complaint ¶ 26. Lanier also impregnated Shadana twice, and then forced her to terminate both pregnancies. Complaint ¶ 27.

Plaintiffs filed this civil rights action on January 10, 2006 seeking damages from the City based on its failure to protect them from Lanier. The City then moved to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6).

II. LEGAL STANDARD

When deciding a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), the Court may look only to the facts alleged in the complaint and its attachments. Jordan v. Fox, Rothschild, O’Brien & Frankel, 20 F.3d 1250, 1261 (3d Cir. 1994). The Court must accept as true all well-pleaded allegations in the complaint and view them in the light most favorable to the plaintiff. Angelastro v. Prudential-Bache Sec., Inc., 764 F.2d 939, 944 (3d Cir. 1985). A Rule 12(b)(6) motion will be granted only when it is certain that no relief could be granted under any facts that could be proved by the plaintiff. Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988).

III. ANALYSIS

In order to make a prima facie case under Section 1983, a plaintiff must show that a person acting under color of law deprived him of a federal right.³ Berg v. County of Allegheny,

³ 42 U.S.C. § 1983 states in part:
Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and

219 F.3d 261, 268 (3d Cir. 2000). Plaintiffs contend that the City's failure to protect Rasheeda and Shadana from Lanier violated their substantive Due Process rights under the Fourteenth Amendment.

The City's Motion to Dismiss is based on the well-established principle that the Due Process Clause does not confer an "affirmative right to governmental aid, even where such aid may be necessary to secure life, liberty, or property interests of which the government itself may not deprive the individual." DeShaney v. Winnebago County Dept. of Social Svcs., 489 U.S. 189, 196 (1989). Thus, the protection the Due Process Clause offers is *from* the government; it does not generally obligate the government to offer protection from others or oneself.

On its face, this principle would disqualify Plaintiffs' claims: the City could not be held liable for the injuries Plaintiffs have alleged, because it was not obligated to protect them from Lanier. Courts, however, have recognized two exceptions to the general non-liability rule where (1) the state has a "special relationship" with the plaintiff or (2) the state created the danger to the plaintiff. Plaintiff argues that both exceptions apply in this case. The Court disagrees.

The United States Supreme Court's landmark decision in DeShaney v. Winnebago County Dep't of Human Svcs., 489 U.S. 189 (1989) sets out the general rule against holding governmental entities liable under the Due Process Clause for their failure to protect and explores the exceptions to that rule. The tragic facts in DeShaney are remarkably similar to those presented here. The case involved a young boy named Joshua who lived in the custody of his father. DeShaney, 489 U.S. at 192. The Winnebago Department of Social Services first received information that Joshua's father was physically abusing him in January 1982. One year later, that suspicion was all but confirmed when

Joshua was admitted to the hospital with multiple bruises and abrasions. The examining physician suspected child abuse and notified [the Department of Social Services], which immediately obtained an order from a Wisconsin juvenile court placing Joshua in the temporary custody of the hospital. Three days later, the county convened an ad hoc 'Child Protection Team' ... to consider Joshua's

laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

situation. At this meeting, the Team decided that there was insufficient evidence of child abuse to retain Joshua in the custody of the Court ... Based on the recommendation of the Child Protection Team, the juvenile court dismissed the child protection case and returned Joshua to the custody of his father.

Id. That proved to be an unfortunate decision. Over the next few years, the evidence that Joshua's father was abusing him continued to mount until March 1984, when Joshua's father beat him so severely that he fell into a life-threatening coma. "Emergency brain surgery revealed a series of hemorrhages caused by traumatic injuries to the head inflicted over a long period of time. Joshua did not die but he suffered brain damage so severe that he is expected to spend the rest of his life confined to an institution for the profoundly retarded." Id. at 193.

Joshua and his mother subsequently brought suit under Section 1983 against the Winnebago Department of Social Services and several of its employees alleging that the defendants had violated Joshua's substantive due process rights. The Court found that no such violation had taken place because "a State's failure to protect an individual against private violence simply does not constitute a violation of the Due Process Clause." Id. at 197.

Significantly, the Court also found that none of the exceptions to the general rule applied to Joshua's case. The Court first discussed what has come to be known as the "special relationship exception," which, it explained, is rooted in the Eighth Amendment requirement that the State must provide safe conditions for those it incarcerates. Id. at 198 ("Because the prisoner is unable to care for himself, it is only just that the State be required to care for him.") (internal citations and quotations omitted). Thus, the exception applies when "the State takes a person into its custody and holds him there against his will[.]" Id. at 199-200. Only in that case does the State "so restrain an individual's liberty that it renders him unable to care for himself[.]" Id. at 200. Because Joshua was in his father's custody rather than the State's when he was injured, the Court reasoned, the exception did not apply.

The Court also addressed what has come to be known as the "state created danger exception." It found that "[w]hile the State may have been aware of the dangers that Joshua faced in the free world, it played no part in their creation, nor did it do anything to render him any

more vulnerable to them.” Accordingly, concluded the Court, the State was not liable for failing to protect Joshua from those dangers.

Plaintiffs base their argument for the “special relationship” exception on the fact that the City had maintained Plaintiffs in foster care for an extended period and then continued to supervise their case after they had returned to live with their mother. That level of involvement in Plaintiffs’ lives, they argue, constitutes the sort of special relationship that obligates the City to protect them. In DeShaney, however, the Supreme Court expressly rejected the contention that such a relationship obligates the State to protect the child from harm. There, after the Department of Human Services made its initial determination that there was not enough evidence to remove Joshua from his father’s custody, the Department assigned one of its caseworkers to make monthly visits to Joshua’s home in order to assess his safety. DeShaney, 489 U.S. at 192. This was precisely the relationship Plaintiffs have alleged existed between themselves and the City once they were returned to live with their mother.

Plaintiffs seek to distinguish their case from DeShaney by pointing to the fact that they were in the City’s custody for a much longer period of time than Joshua was in the Department of Human Services’ and that the City was more closely involved in supervising their safety after they were returned to their mother. However, both DeShaney and the cases that have subsequently interpreted it show such distinctions to be irrelevant. The DeShaney Court held that a “special relationship” does not exist unless “the State takes a person into its custody and holds him there against his will[.]” DeShaney, 489 U.S. at 199-200 (emphasis added). The Third Circuit has repeatedly emphasized that the custody in question must be physical in order to trigger the exception. See, e.g., Torisky v. Schweiker, 446 F.3d 438, 445 (3d Cir. 2006) (quoting D.R. v. Middle Bucks Area Vocational Tech Sch., 972 F.2d 1364, 1370 (3d Cir. 1992) (“Our court has read DeShaney primarily as setting out a test of physical custody.”) (emphasis added).

When Rasheeda and Shadana were in foster care, they were in the physical custody of the City – the food they ate and the house they slept in were effectively provided by the City. See Nicini v. Morra, 212 F.3d 798, 808 (3d Cir. 2000) (holding that because foster children, like the

incarcerated or the involuntarily committed, are “placed ... in a custodial environment ... when the state places a child in a state-regulated foster care, the state has entered into a special relationship with that child which imposes upon it certain duties.”). But when Plaintiffs were returned to live with their mother, the physical custody ended, as the City was no longer the provider of their basic needs. It was at that point that the City’s “special relationship” with Plaintiffs came to an end. Since the sexual abuse took place thereafter, the City cannot be held liable for it.

DeShaney also forecloses relief under the “state created danger exception.” Plaintiffs argue that the City created the danger when it returned them to their mother knowing that she was irresponsible and that she associated with Lanier. But, as noted above, the Supreme Court rejected precisely this theory in DeShaney, when it held that the Department of Social Services’ decision to return Joshua to his father despite the evidence that the father posed a serious threat to him did not trigger the exception: “That the State once took temporary custody of Joshua does not alter the analysis, for when it returned him to his father’s custody, it placed him in no worse position than that in which he would have been had it not acted at all; the State does not become the permanent guarantor of an individual’s safety by having once offered him shelter.”

DeShaney, 489 U.S. at 201.

The same principle applies here. The danger that threatened and ultimately harmed Plaintiffs was their mother’s wanton irresponsibility and specifically, her decision to leave them with Lanier. Soon after Plaintiffs were born, the City offered them protection from that danger. When it withdrew that protection in the mid-1990’s, the City did not create a new danger; it simply returned Plaintiffs to the condition they would have been in had there never been an intervention in the first place. See Bright v. Westmoreland, 443 F.3d 276, 281 (3d Cir. 2006) (stating that one of the “four elements of a meritorious ‘state-created danger claim’” is that “a state actor affirmatively used his or her authority in a way that created a danger to the citizen or that rendered the citizen more vulnerable to danger than had the state not acted at all.”) (emphasis added). The decision to return Plaintiffs to their mother was clearly misguided and led to tragic

consequences; but it does not give rise to liability under the Due Process Clause. See Jervis v. McMullen, 225 F.3d 960 (7th Cir. 2000) (State was not liable for returning child to her father who associated with a known pedophile because “the State did not increase the danger of significant harm to [the girl]; it merely placed her back into the situation from which it had originally retrieved her.”); Bennett v. City of Philadelphia, 2006 WL 1371189, at *8 (E.D. Pa. May 17, 2006) (holding that the Department of Human Services was not liable for the sexual abuse of two young girls suffered after they were returned to their mother because “the source of the danger to the Bennett sisters was their mother and the people with whom she chose to leave her children.”).

IV. CONCLUSION

The City’s tragic decision to return Plaintiffs to their mother is impossible to understand. Nevertheless, it was not a violation of the Due Process Clause. Accordingly, Plaintiffs’ Section 1983 claim will be dismissed. An appropriate Order follows.

**IN THE UNITED STATES DISTRICT COURT
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v.	:	
	:	
THE CITY OF PHILADELPHIA, <u>et al.</u>	:	

ORDER

AND NOW, this 8th day of August, 2006, upon consideration of Defendant City of Philadelphia's Motion to Dismiss (docket no. 2) and Plaintiffs' response thereto and for the reasons stated in the accompanying memorandum, it is **ORDERED** that the Motion is **GRANTED**. The Clerk shall mark this case **CLOSED**.

BY THE COURT:

/s/ Bruce W. Kauffman
BRUCE W. KAUFFMAN, J.